

1
2
3 IN THE UNITED STATES DISTRICT COURT
4 FOR THE NORTHERN DISTRICT OF CALIFORNIA

5 ANDRE SMITH, T-16447,)
6 Petitioner,) No. C 17-2063 CRB (PR)
7 vs.) ORDER OF DISMISSAL
8 DAVID DAVEY, Warden,) (ECF No. 2)
9 Respondent.)
10

11 Petitioner, a state prisoner currently incarcerated at California State
12 Prison, Corcoran, has filed a second or successive petition for a writ of habeas
13 corpus under 28 U.S.C. § 2254. His first petition was dismissed as untimely on
14 July 30, 2013. See Smith v. Lewis, No. 12-4011 CRB (PR) (N.D. Cal. July 30,
15 2013) (order granting motion to dismiss).

16 A second or successive petition may not be filed in this court unless
17 petitioner first obtains from the United States Court of Appeals for the Ninth
18 Circuit an order authorizing this court to consider the petition. See 28 U.S.C. §
19 2244(b)(3)(A). Petitioner has not obtained such an order from the Ninth Circuit.
20 The petition accordingly is DISMISSED without prejudice to refiling if petitioner
21 obtains the necessary order.

22 But based solely on petitioner's affidavit of poverty, his application to
23 proceed in forma pauperis (ECF No. 2) under 28 U.S.C. § 1915 is GRANTED.

24 The clerk shall terminate all pending motions as moot and close the file.
25 SO ORDERED.

26 DATED: April 19, 2017

27 
28 CHARLES R. BREYER
United States District Judge